

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Bail (Amendment) Bill 1994

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Bail (Amendment) Bill 1994

**A BILL
FOR**

An Act to amend the *Bail Act 1992*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Bail (Amendment) Act 1994*.

5 Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 Principal Act

3. In this Act, "Principal Act" means the *Bail Act 1992*.¹

Interpretation

4. Section 3 of the Principal Act is amended—

10 (a) by omitting from subsection (1) the definition of "bail undertaking";

(b) by omitting from subsection (1) the definition of "offence" and substituting the following definition:

" 'offence' includes—

15 (a) an alleged offence; and

(b) except in the case of paragraph 7 (1) (a)—a breach of the peace or an apprehended breach of the peace;";

(c) by inserting after paragraph (2) (a) the following paragraph:

20 (ab) a person arrested for a breach of the peace or an apprehended breach of the peace; and

(d) by omitting from paragraph (3) (a) "undertaking or".

Bail for minor offences and breaches of the peace

5. Section 7 of the Principal Act is amended—

25 (a) by omitting paragraph (3) (a) and substituting the following paragraph:

30 "(a) an accused person who, in relation to the commission of the same offence on a previous occasion, failed to comply with any undertaking to appear or bail condition given or imposed in relation to that offence on that occasion;"; and

(b) by omitting paragraph (3) (c).

Substitution

6. Section 8 of the Principal Act is repealed and the following sections are substituted:

Bail following arrest for breach of peace

"7A. A person arrested for a breach of the peace or an apprehended breach of the peace—

- 5 (a) is entitled to be granted bail without any condition or on condition that he or she keep the peace; and
- (b) shall be released from custody as soon as he or she has given an undertaking to appear and, if a condition to keep the peace is imposed, has entered into an agreement under paragraph 25 (1) (a);

10 unless—

- (c) as a consequence of the conduct that resulted in his or her being arrested, another person would be likely to make application for a protection order under the *Domestic Violence Act 1986* or for a restraining order under the *Magistrates Court Act 1930* against the arrested person; or
- 15 (d) in relation to a breach of the peace or an apprehended breach of the peace on a previous occasion, the person failed to comply with any undertaking to appear or bail condition given or imposed in relation to that breach or apprehended breach on that occasion.

20 **Bail for offences other than minor offences**

"8. (1) This section applies to—

- (a) offences other than those referred to in subsection 7 (1);
- (b) persons to whom, by virtue of subsection 7 (3), subsection 7 (2) does not apply; and
- 25 (c) persons not entitled to bail by virtue of paragraph 7A (c) or (d).

"(2) A person—

- (a) accused of an offence to which this section applies; or
- (b) to whom this section applies;

is entitled to be granted bail in accordance with this Act unless—

- 30 (c) the court or authorised officer is satisfied that, having regard to the matters referred to in whichever of sections 22 and 23 apply to the accused person, the court or authorised officer is justified in refusing bail; or
- (d) the requirement for bail is dispensed with under section 10."

Dispensing with bail

7. Section 10 of the Principal Act is amended by adding at the end the following subsections:

- 5 “(3) Where, during an appearance by an accused person before a court, no specific order or direction is made by the court in respect of bail, the court shall be deemed to have dispensed with the requirement for bail.

“(4) Subsection (2) does not apply if, under subsection 33 (2A), the court is to be taken to have continued bail.”.

Determination of bail after charge laid

- 10 8. Section 13 of the Principal Act is amended—

(a) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:

- 15 “(a) a person who has been taken into custody by a police officer is charged with an offence but is not to be brought before a court forthwith after being so charged; or

- (b) it is not practicable to bring before a court forthwith a person arrested under a warrant (being a warrant which does not expressly preclude the granting of bail) issued under subsection 42 (1) of the *Magistrates Court Act 1930* in respect of an offence punishable by a fine or by imprisonment for a period not exceeding 2 years ;” and

(b) by inserting in subsections (1), (4) and (5) “or arrests” after “charges”.

Notification of decision of authorised officer

- 25 9. Section 16 of the Principal Act is amended—

(a) by inserting after paragraph (1) (c) the following paragraph:

“(ca) the right of the accused person to request a review of the decision under section 38;” and

(b) by inserting after subsection (2) the following subsections:

- 30 “(2A) An authorised officer who refuses to admit an accused person to bail may refrain from complying with paragraph (1) (d) or (e) and subsection (2) if he or she believes on reasonable grounds that it is necessary to do so in order to prevent—

- (a) the escape of an accomplice of the accused person; or
35 (b) the loss, destruction or falsification of evidence relating to the offence.

“(2B) Where an authorised officer refrains from complying with paragraph (1) (d) or (e) and subsection (2) for a reason specified in subsection (2A), he or she shall record, or cause to be recorded, his or her reasons for not complying.”.

5 **Heading to Part V**

10. The heading to Part V of the Principal Act is omitted and the following heading substituted:

**“PART V—BAIL CONDITIONS AND UNDERTAKINGS TO
 APPEAR”.**

10 **Conditions on which bail may be granted to adults**

11. Section 25 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “undertakes” and substituting “enters into an agreement”; and
- (b) by inserting after subsection (6) the following subsection:

15 “(6A) An agreement or acknowledgment under this section may be entered into or made in respect of more than 1 offence.”.

Repeal

12. Section 29 of the Principal Act is repealed.

20 **Agreement to bail requirements and entry into bail agreements
etc.**

13. Section 31 of the Principal Act is amended by omitting from subsection (1) “bail undertaking” and substituting “undertaking to appear”.

Acceptable persons and security for bail

25 14. Section 32 of the Principal Act is amended by omitting subsection (3).

Continuation of bail and undertakings

15. Section 33 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

30 “(1) If an accused person has given an undertaking to appear at a place, date and time at which proceedings in respect of the offence may be continued, whether on any adjournment, postponement or other deferment of the proceedings, or by way of committal, a court may continue the bail already granted in respect
35 of the offence, whether or not the accused person is present in court.”;

- (b) by omitting from subsection (2) "given by the accused person continues to apply except to the extent that the undertaking" and substituting "and the bail conditions continue to apply, except to the extent that the undertaking or condition";
- 5 (c) by inserting after subsection (2) the following subsection:

“(2A) If the accused person appears before a court in accordance with a bail undertaking referred to in subsection (1) but no specific direction is made by the court in respect of bail, the court is to be taken to have continued bail.”; and
- 10 (d) by omitting from subsection (3) all the words after "surety" (last occurring) and substituting "if the court from time to time directs the proceedings in respect of the offence be adjourned, postponed or otherwise deferred or the accused person is committed for trial";
- 15 (e) by omitting from subsection, (4) "extended" and "extension" and substituting "continued" and "continuation", respectively;
- (f) by omitting from subsection (5) "or postponed" (wherever occurring) and substituting ", postponed or otherwise deferred";
- (g) by omitting from subsection (5) "extend" and substituting "continue";
- 20 (h) by inserting in subsection (5) "to appear" after "undertaking";
- (i) by omitting from subsection (6) "undertaking given" and substituting "agreement entered into";
- (j) by omitting from subsection (6) "extended" and substituting "continued"; and
- 25 (k) by omitting from subsection (6) "or postponed" and substituting ", postponed or otherwise deferred".

Discharge of sureties

16. Section 36 of the Principal Act is amended by omitting from subsection (6) "undertaking or".

30 Furnishing of information relating to bail

17. Section 47 of the Principal Act is amended—

- (a) by omitting from subsection (1) "furnish the person with the prescribed information" and substituting "give to the person, by notice in writing, information";
- 35 (b) by omitting from subsection (2) "furnish the accused person, or cause the accused person to be furnished, with the prescribed

information" and substituting "give to the person, by notice in writing, information"; and

(c) by omitting subsection (3).

Notification to court that bail condition not satisfied

5 18. Section 48 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

 “(5) The regulations may prescribe information that is to be forwarded to a court with a notice under this section.”.

Failure to answer bail

10 19. Section 49 of the Principal Act is amended by omitting subsection (2).

Abolition of right of surety to arrest

 20. Section 56 of the Principal Act is amended—

15 (a) by omitting “gives an undertaking” and substituting “enters into an agreement”; and

 (b) by omitting “given that undertaking” and substituting “entered into that agreement”.

Insertion

20 21. After section 57 of the Principal Act the following section is inserted:

Form of certain instruments

 “57A. Each of the following instruments shall be in a form approved by the Minister:

- 25 (a) an agreement or acknowledgment under section 25;
- (b) an instrument under subsection 28 (1);
- (c) a notice under subsection 30 (4);
- (d) a notice under section 34;
- (e) an instrument under section 47;
- (f) a notice under subsection 48 (2).”.

30 **Transitional**

 22. The amendments of the Principal Act effected by this Act apply in relation to determinations regarding the granting of bail made after the

commencement of this section whether or not made in relation to an offence committed or proceedings instituted before that commencement.

NOTE

1. Act No. 8, 1992 as amended by No. 75, 1992.

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